Threat of real competition leads SBC to pout

The company's refusal to share DSL lines means it will deny access to Illinois customers, writes ***Terry S. Harvill***

Last month, Ed Whitacre, SBC Communications' chairman and CEO, and local SBC Ameritech executives announced that the company was abandoning its commitment to deploy high-speed Internet access to Illinois consumers. To justify this decision, SBC Ameritech cited a recent decision by the Illinois Commerce Commission that, according to the company, unfairly required them to share their network with their competitors. After all, the company argued, cable, wireless and satellite providers of high-speed Internet services are not required to share their networks with their competitors, so why should SBC Ameritech be required to do so? Unfortunately, SBC Ameritech misses the point.

The ICC decision focused on increasing competition among the companies that provide high-speed Digital Subscriber Line services to residential and small-business consumers by utilizing SBC Ameritech's upgraded network facilities. The issue was not, as Whitacre would have you believe, competition among cable, wireless and satellite Internet service providers but, rather, companies that provide DSL services through the use of SBC Ameritech's voice network.

Through what SBC Ameritech termed "Project Pronto," the company planned to invest in new technology to upgrade their facilities to support both voice and DSL service to consumers—an upgrade that was long overdue. This new technology would allow SBC Ameritech to overcome the distance limitations of current DSL technology and reach millions of consumers now unserved by any DSL provider. Since no other provider offers high-speed Internet access to these customers, SBC Ameritech would be the sole provider to these customers. The ICC ruling requires the company to allow its competitors meaningful access to their network at reasonable prices so that they may reach remote consumers as well, thereby increasing the number of companies providing DSL service and spurring sufficient competition to lower the cost to consumers.

Not surprisingly, the story does not end there. In a carefully worded letter to several members of Congress last month, Whitacre harshly criticized the ICC decision and said that SBC Ameritech has "been forced to halt indefinitely further deployment and activation of new DSL facilities in Illinois that would have made high-speed Internet service available to over a million Illinois consumers. . . . Those customers cannot now, and may never, have access to DSL service."

As we all know, the competitiveness of a market easily can be measured by one player's ability to control the supply of a good. Whitacre's statement is clear: SBC Ameritech controls the market so completely that it can determine if more than a million consumers in Illinois will have access to broadband services. If the market were competitive, SBC Ameritech would not be able to unilaterally halt the deployment of DSL infrastructure and deny Illinois consumers advanced telephone services.

Whitacre's letter goes on to criticize the decision on the grounds that it "will cost hundreds of millions of dollars to implement" and "has made it economically impossible for SBC to recover the cost of deploying and operating the new DSL service in Illinois." Unfortunately, there are several problems with his statement.

First, despite being subject to three separate proceedings regarding access to Project Pronto, the company failed to provide the ICC with any estimate of what, if any, additional cost such a decision would impose. Second, the ICC's decision allows SBC Ameritech to recover the costs associated with the sharing arrangement via rates already in place in Illinois. Third, under the ICC's order, SBC Ameritech would not only receive the wholesale revenue from the competitors' use of the network for DSL, but also the wholesale or retail revenue associated with the voice services provided over the same lines.

Whitacre concludes by saying "the ICC order unwisely jumps the gun on Congress and the FCC on these critical issues, to the detriment of both competition and consumers in Illinois, and may tempt other states down the wrong path as well." In other words, Whitacre contends that the ICC's order to increase the number of competitors in the high-speed DSL market will deter competition. I guess that makes sense coming from the man Business Week magazine labeled as "the last great monopolist."

Perhaps he hopes that the innovative and forward-looking policies that have been developed by the ICC over the last several decades and implemented at the federal level and in other state jurisdictions are ignored or preempted by federal legislation.

If you ask Whitacre, I am certain he will tell you that he wants to provide high-speed Internet service to Illinois consumers. What he will not say is that he will do so only to the extent that he is the sole provider of such services. In other words, Whitacre wants to extend his monopoly over the local telephone network to high-speed Internet access. Maybe that is why SBC was able to reduce service and increase the price for DSL service by 25 percent last month.

Whitacre's statements are the most compelling reason for the continued implementation of the Federal Telecommunications Act of 1996, especially its market-opening provisions, by state and federal agencies. Any national broadband policy must emphasize and provide incentives for companies like SBC Ameritech to continue to improve their infrastructure by adding broadband service capabilities to their existing network. Without competitive guidelines like those to which Whitacre objects, it is very likely that millions of consumers in Illinois never will see the intended benefits of competition in the form of lower prices, multiple choices for broadband services and improved customer service.

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March 29, 2001

The Honorable J. Dennis Hastert
Speaker of the House
2369 Rayburn House Office Building
Washington, DC 20515-1314

Dear Speaker Hastert:

This letter is in response to the March 14, 2001, letter sent to you and several other members of Congress by SBC's Chairman and Chief Executive Officer Ed Whitacre, Jr. ("Whitacre letter") regarding a recent decision by the Illinois Commerce Commission ("ICC").

I am generally quite reluctant to engage in a public debate over one of the ICC's decisions. However, Mr. Whitacre's letter oversimplifies and misrepresents the issues and compels me to respond.

The ICC, like all state level regulatory bodies, has been striving over the past five years to adhere to the requirements and the intent of the Telecommunications Act of 1996 ("Act"). The unquestioned premise of the Act was that competition in the telecommunications market would lead to lower prices for customers, technological innovation by service providers, and better customer service. At this time, there is serious concern at the state level that the advancement of competition is not being met. Many believe this may be due, in part, to a lack of cooperation by the incumbent local exchange carriers ("ILECs") to abide by the market-opening provisions of the Act.

While I agree with Mr. Whitacre that a "national broadband" policy would be useful in preparing the country for the challenges of the 21st century, his letter attempts to obfuscate the issue at a time when the public needs clarity and objectivity. Simply put, Mr. Whitacre's conclusions fail as a matter of law and of public policy.

In the second paragraph of the letter, Mr. Whitacre states in part:

> "The Illinois Commerce Commission's decision orders that we unbundle the numerous new facilities we are deploying and provide some of our competitors access to each portion of the service. That decision, which will cost hundreds of millions of dollars to implement, has made it economically impossible for SBC to recover the cost of deploying and operating the new DSL service in Illinois....We have been forced to halt indefinitely further deployment and activation of new DSL facilities in Illinois.... Those customers cannot now, and may never, have access to DSL service."

These statements imply that the ICC misapplied the law and is out of touch with state-of-the-art policy discussions. Such a conclusion is simply not supported by fact.

As a matter of law, the decision is sound. In December 1999, the FCC issued an order that required ILECs such as Ameritech Illinois, to "line share," or allow competitors to provide data services over the same local loop that the ILEC uses to provide voice service. The FCC, ICC and other state commissions rejected the narrow view, argued by Ameritech Illinois and other ILECs, that line sharing should only apply to communities that are served by all-copper local loops, and not to communities that are served by a combination of fiber and copper facilities. Instead, the FCC and the ICC held that all ILECs are required to offer line sharing over all facilities. Indeed, the DSL infrastructure that Mr. Whitacre refers to is composed of a combination of fiber and copper facilities. Thus, to accept Mr. Whitacre's position would effectively eliminate Ameritech-Illinois' obligation to line share. It is clear that the ICC's decision is consistent with the Act, with FCC precedent, and with the rulings of other states. The fact that Mr. Whitacre's letter wholly fails to address the content of these rulings undermines his position entirely.

As a matter of policy, the Whitacre letter portrays a chilling view of a future without a sensible broadband policy. As quoted above, the Whitacre letter states "Those customers cannot now, and may never, have access to DSL service." As we all know, the competitiveness of a market can easily be measured by the ability of any one player to unilaterally control the supply of a good. Mr. Whitacre's statement is clear: **Ameritech Illinois controls the market so completely that it can determine if more than a million customers in Illinois will have access to broadband services.** If the market were competitive, SBC/Ameritech would not be able to unilaterally halt the deployment of DSL infrastructure and deny these customers advanced telephony services.

Mr. Whitacre's above quote is the most compelling reason for the continued implementation of the Act, especially its market opening provisions, by state and federal agencies. As Congress considers the issues surrounding a national broadband policy, I respectfully suggest that the recent rulings of the FCC and the various state commissions be used as the template. Specifically, the new policy should emphasize and provide incentives for ILECs to continue to improve their infrastructure by adding broadband service capabilities to their copper network. Further, to the extent that broadband services continue to be provided over the voice network, the opportunity for unfettered competition created by the ICC's decision must continue. Without competitive guidelines like those Mr. Whitacre objects to, it is unlikely that millions of customers in Illinois will ever see the intended benefits of the Act in the form of lower prices, many choices for broadband services, and better customer service.

Attached please find a more detailed analysis of several issues raised in the Whitacre letter. If you have any questions regarding this issue, please do not hesitate to contact me. As always, I would be happy to meet with you about this subject at your convenience. Thank you for your attention to this critical issue.

Sincerely,

Terry S. Harvill
Commissioner

cc: The Honorable George H. Ryan
Governor

Attachment 1
ICC Response to Whitacre Letter

In his recent letter, Mr. Whitacre takes issue with the Illinois Commerce Commission's recent decision with regard to SBC's Project Pronto facilities. The purpose of this attachment is to further explore the oversimplifications and misleading statements contained in that letter.

CLAIM #1

"...SBC Communications launched a three-year, six billion-dollar initiative [a.k.a. Project Pronto] to make high-speed Internet service available to 77 million Americans.."

FACT #1

Mr. Whitacre's suggestion that Project Pronto is being deployed solely to support data services is dangerously misleading. Both traditional voice-grade telephone service and data service will be provided over Project Pronto. Allowing Ameritech to circumvent its current obligations to provide local loops to CLECs for voice service provision, under the auspices of a local loop upgrade initiative, could be destructive to competition. If at any time in the future SBC/Ameritech decided to make its current, antiquated loop infrastructure unavailable to CLECs (i.e., remove it from service), competitors would be left without local loop facilities over which to provide voice and/or data.

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ICC Response to Whitacre Letter

SBC CLAIM #2

"That decision [the ICC's decision], which will cost hundreds of millions of dollars to implement, has made it economically impossible for SBC to recover the cost of deploying and operating the new DSL service in Illinois."

FACT #2

There are several problems with this claim. First, despite Ameritech-Illinois being subject to three separate proceedings dealing with the issue of access to Project Pronto, the Company failed to provide the ICC with any estimate of what, if any, additional cost an unbundling requirement would impose. Therefore, Mr. Whitacre's claim that the ICC's decision will increase SBC/Ameritech's costs has not been supported by any factual evidence.

Second, the ICC's decision allows SBC/Ameritech to recover the cost of CLECs utilizing the facilities through Total Element Long-Run Service Incremental Cost ("TELRIC") rates. This pricing method has been used throughout the nation for years to price interconnection and unbundled network elements. Moreover, Ameritech has already agreed to provide a wholesale "Broadband Offering"[1] at TELRIC rates. Because the Broadband Offering uses the very same Project Pronto architecture as is in dispute, by offering this service at TELRIC rates SBC/Ameritech it is specifically acknowledging that TELRIC rates provide sufficient compensation. In effect, SBC/Ameritech acknowledges that TELRIC rates would provide sufficient cost recovery under its own terms, while simultaneously arguing that such rates would not be sufficient under the terms proscribed by the ICC.

Third, in a line sharing arrangement between SBC/Ameritech and CLECs, SBC will not only receive wholesale revenue from CLEC's associated with data services, but will **also** receive retail or wholesale revenues associated with the voice services provided over the same line. It is hard to imagine how, given this dual compensation scheme, SBC/Ameritech will not recover the cost of deploying and operating DSL service in Illinois.

Finally, Mr. Whitacre's claim is especially disingenuous in light of previous claims by SBC that the six billion dollar price tag of Project Pronto could be overcome entirely through the maintenance cost reductions associated with the new technology. Stated differently, SBC/Ameritech has projected more than $6 billion in maintenance cost savings by deploying new technology as opposed to maintaining its current, antiquated plant.

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[1] The wholesale Broadband Offering is an end-to-end DSL platform which SBC/Ameritech has allegedly agreed to provide CLECs utilizing Project Pronto facilities. See Ameritech accessible letter dated May 24, 2000, Letter No. CLECAM00-044.

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ICC Response to Whitacre Letter

SBC CLAIM #3

"The decision to impose regulations designed for voice service on only one player in a competitive, emerging market for high-speed Internet service reinforces the need for swift Congressional action to establish a national broadband policy...

While the old battles over regulation of voice phone service rages on, however, Congress must ensure that rules intended to promote competition in one market do not stifle it in another...

I strongly urge you to pass legislation this year to remove the legacy regulations of the voice market from the competitive market for high-speed Internet service... "

FACT #3

SBC's position that the Telecommunications Act should not be applied to DSL services is an argument the Company has lost in various legal proceedings time and again.[2] Policymakers have acknowledged that the efficient deployment of advanced services technology requires application of the same unbundling rules as those that apply to voice services. This is exactly what the ICC's decision accomplishes.

Mr. Whitacre's statements seem to imply that the ICC somehow overstepped its authority in issuing its recent ruling. To the contrary, the ICC's ruling is fully consistent with federal and state law. Section 251 of the Telecommunications Act requires an incumbent carrier to not only provide resold telecommunications services (as SBC/Ameritech has voluntarily agreed to provide here), but also unbundled access (which SBC/Ameritech is refusing to provide). Our decision correctly applied the federally-mandated "necessary and impair standard" to determine that the Project Pronto facilities meet the unbundling requirements. The ICC would be obviating its responsibilities by ignoring this record of evidence.

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[2] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* , CC Docket No. 96-98, 14, (F.C.C. November 15, 1999)("[O]ur unbundling rules are designed to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services.")
See also, Association of Communications Enterprises, Appellant v. *Federal Communications Commission*, Appellee, Docket No. No. 99-1441 *slip op.* (C.A.D.C. Cir. January 9, 2001)(holding that the FCC could not eliminate Ameritech's resale obligations by ordering Ameritech to provide Advanced Services through an affiliate)

Attachment 1
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SBC CLAIM #4

"Cable companies continue to dominate the market for high-speed Internet access, with more than 70 percent market share, yet regulators continue to impose regulations on DSL service offered by telephone companies...

...[A]s long as lawmakers apply burdensome rules and regulations to only one provider, consumers will suffer...

It would be troubling enough if policymakers applied these rules to all providers in this emerging market, but applying them to only one provider threatens competition, investment and innovation."

FACT #4

SBC/Ameritech's complaint seems to imply that in the face of growing competition from cable companies, ILECs should not be required to ensure that their networks can deliver broadband services in accordance with the law. The position also appears to be that further regulation of cable companies is preferable to the simple enforcement of the existing rules that require ILECs to deliver broadband services as efficiently as possible. This attempts to hide the real issue at hand, which is, regardless of the service a CLEC provides over SBC/Ameritech's local loop facilities, SBC/Ameritech is obligated to provide local loops to CLECs. Allowing SBC/Ameritech to thwart this obligation by upgrading its network could allow the Company to unilaterally determine where SBC/Ameritech incurs competitive pressures. This was clearly not the intent of Congress when the Telecommunications Act was implemented.